

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS

No. 6:24-cv-00287

Richard David Peterson,
Plaintiff,

v.

Nancey McKennedy et al.,
Defendants.

ORDER

Plaintiff Richard David Peterson, an inmate of the Gregg County Jail proceeding pro se and in forma pauperis, filed this lawsuit. The case was referred to United States Magistrate Judge K. Nicole Mitchell pursuant to 28 U.S.C. § 636(b).

On August 14, 2024, the magistrate judge issued a report recommending that the plaintiff's lawsuit be dismissed with prejudice for failure to state a claim pursuant to 28 U.S.C. § 1915(e). Doc. 4. A copy of the report was mailed to the plaintiff, who did not file written objections.

When no party objects to the magistrate judge's report and recommendation, the court reviews it only for clear error. *See Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1420 (5th Cir. 1996). The court agrees with the magistrate judge that the complaint should be dismissed—but on different grounds. Although plaintiff filed his complaint on a form labeled "Prisoner's civil rights complaint," he alleges that individuals associated with Eastman Villa Trailer Park—a nongovernmental entity—stole property having a value of \$30,000 from him. *See* Doc. 1 at 3.

Dismissing with prejudice for failure to state a claim "is a decision on the merits and essentially ends the plaintiff's lawsuit, whereas a dismissal on jurisdictional grounds alone is not on the merits and permits the plaintiff to pursue his claim in . . . another forum." *Hitt v. City of Pasadena*, 561 F.2d 606, 608 (5th Cir. 1977). And courts should liberally construe the filings of pro se litigants.

Collins v. Dallas Leadership Found., 77 F.4th 327, 330 (5th Cir. 2023).

The court therefore construes plaintiff's complaint as attempting to assert state-law claims, not claims under § 1983. Accordingly, because the amount in controversy is less than \$75,000, plaintiff's claims are dismissed without prejudice for lack of subject-matter jurisdiction. *See* 28 U.S.C. § 1332(a). All pending motions are denied as moot.

So ordered by the court on November 21, 2024.

A handwritten signature in black ink, appearing to read "J. Campbell Barker", is written over a horizontal line.

J. CAMPBELL BARKER
United States District Judge